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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1982

NO. 82-5868

ROBERT WAYNE WILLIAMS
PETITIONER

VERSUS

ROSS C. MAGGIO, JR., WARDEN, AND
ATTORNEY GENERAL FOR THE STATE OF LOUISIANA
RESPONDENTS

OPPOSITION TO PETITION FOR WRIT OF CERTIORARI
THE UNITED STATES COURT OF APPEALS FOR THE
FIFTH CIRCUIT

WILLIAM J. GUSTE, JR.
ATTORNEY GENERAL
STATE OF LOUISIANA

OSSIE BROWN
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NINETEENTH JUDICIAL DISTRICT
BATON ROUGE, LOUISIANA

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RESPONDENTS

APPEARANCE OF COUNSEL

To the Clerk of the United States Supreme Court:

Please enter my appearance as attorney for the State of Louisiana, Respondent, in the above entitled matter.

Respectfully submitted,

JOHN W. SINQUEFIELD
ASSISTANT DISTRICT ATTORNEY

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Petitioner, Robert Wayne Williams, is requesting this Court to grant a Writ of Certiorari to review the ruling of the United States Court of Appeals for the Fifth Circuit affirming his conviction and death sentence.

CITATION TO OPINIONS BELOW

The opinion of the Court of Appeals is reported at 679 F.2d 381 (5th Cir. 1982). Rehearing was denied by the same court at 679 F.2d 381 (5th Cir. 1982). The original opinion by said court is found at 649 F.2d 1019 (5th Cir. 1981).

STATEMENT OF THE CASE

On January 5, 1979, Robert Wayne Williams and Ralph Holmes entered an A & P Supermarket in Baton Rouge, Louisiana with the intention to rob the store of its money. Both men pulled ski masks over their faces and Williams pulled a .12 gauge sawed-off shotgun. They approached the security guard, Willie Kelley, age sixty-seven (67), who was bagging groceries. Holmes tried to remove Kelley's pistol and as Kelley made a motion towards his pistol, Williams yelled "Don't try it", and shot Kelley in the face at point blank

range. The two (2) culprits then completed the robbery. Holmes "pistol-whipped" one customer and Williams accidentially shot two (2) others.

Based on the above, Robert Wayne Williams was arrested and convicted of first degree murder on April 19, 1979. The following day the jury sentenced Williams to death. Williams' conviction and sentence were affirmed on appeal by the Louisiana State Supreme Court. State v. Williams, 383 So.2d 360 (La. 1980), and certiorari was denied by this Court. Williams v. Louisiana, ____ U.S. ____, 101 S.Ct. 899, 66 L.Ed.2d 828 (1981).

Williams then filed an application for a writ of habeas corpus with the Louisiana State Supreme Court which was denied without written reasons. Thereafter, petitioner filed for a Petition for Writ of Habeas Corpus in the United States District Court for the Middle District of Louisiana which was denied. See Williams v. Blackburn, 649 F.2d 1019, 1021-1026 (5th Cir. 1981). This judgment was affirmed by the United States Court of Appeals for the Fifth Circuit on June 18, 1981. Williams v. Blackburn, 649 F.2d 1019 (5th Cir. 1981). A rehearing was granted and again the judgment was affirmed. Williams v. Maggio, 679 F.2d 381 (5th Cir. 1982). Rehearing was denied and petitioner now applies to this Court for a Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit.

ARGUMENT

CLAIM NO. I: Excusal of potential Juror Brou for cause was proper and was within the requirements of Witherspoon v. Illinois.

In petitioner's first claim, he asserts that the courts below erred in upholding the excusal of Ms. Brou for cause. Petitioner alleges that Ms. Brou's excusal violated this Court's decision in Witherspoon v. Illinois, 391 U.S. 510 (1968). The State of Louisiana respectfully submits the courts below all properly upheld the trial judge's decision to sustain the challenge for cause.

During the voir dire examination of Ms. Brou, the following colloquy took place between the prosecutor and Ms. Brou:

> Q. Assuming that I prove the defendant committed first degree murder and is convicted, assume I prove the statutory requirements of aggravating circumstances, which under Louisiana law make the case appropriate for the death penalty, can you return a verdict that mandates that the defendant be put to death by electrocution?

A. (Ms. Brou) I don't think I could do that.
Q. Okay. I appreciate your being honest with me. And let me ask you this. When you say I don't think I can, what you are telling me, you can't tell me positively that you can; is that correct?
A. (Ms. Brou) I know there is certain cases where you read about them and they are so hideous that you just think, oh, the death penalty would be the only good outcome, but this particular case, I don't know.
Q. As the Judge told you, this is the killing of a -- Well, I don't know if the Judge said all that, but I think it is before the jury. This is the A & P robbery, murder that occurred on January the 5th of this year. And it is my understanding that you fell that you could not return the death penalty.
A. (Ms. Brou) Oh, let's see. I'm afraid I couldn't. I would just be thinking in terms of why can't a person like that be rehabilitated rather than exterminated.
Q. So you feel that you could not return the death penalty?
A. (Ms. Brou) No.

Based on her responses, Ms. Brou was challenged for cause by the State. Defense counsel had no objection and the trial court excused Ms. Brou.

Based on this colloquy, the Louisiana State Supreme Court, the United States District Court for the Middle District of Louisiana, and twice the Fifth Circuit Court of Appeals all found that the requirements of Witherspoon and its progeny had sufficiently been met, and upheld the excusal for cause.

Witherspoon recognized the unconstitutionality of a death sentence imposed by a jury from which venireman had been excused for cause because they expressed general objections to the death penalty or had conscientious or religious scruples against its infliction. Witherspoon, 391 U.S. at 522.

As noted by Mr. Justice White, what Witherspoon and its progeny establish is that:

> "The general proposition that a juror may not be challenged for cause based on his views about capital punishment unless those views would prevent or substantially impair the performance of this duties as a juror in accordance with his instructions and his oath. The State may insist, however, that jurors consider and decide the facts impartially and conscientiously apply the law as charged by the court." Adams v. Texas, 448 U.S. 38, 45 (1980).

Also, this Honorable Court in Witherspoon itself stated that:

> "The most that can be demanded of a venireman in this regard is that he be willing to consider all of the penalties provided by state law, and that he not be irrevocably committed, before the trial has begun to vote against the penalty of death regardless of the facts and circumstances that might emerge in the course of the proceedings." (Emphasis added.)

Witherspoon, 391 U.S. at 1777 N.21. It is exclusion of venireman for broader grounds than this that violates the Witherspoon rationale. (Id.)

The State of Louisiana submits that even under Witherspoon and its progeny, no court has required jurors to be adamant in their stand against the death penalty from the very beginning of voir dire. Rather, the jurors' prejudices and feelings are revealed through the questioning and colloquy which takes place between the court, counsel for both sides, and the veniremen. This delving into the feelings of the jurors is the reason for voir dire or else no reason nor basis would exist to insure that a jury is impartial.

Turning to Ms. Brou, a reading of the colloquy between Ms. Brou and the prosecutor makes it clear that she was not willing to consider all of the penalties provided for by law. She showed a cooperative attitude toward the court and the prosecutor, but in the end she stated "no" to the question of her approving of the death penalty. Reflecting back to the above quoted passage from Adams v. Texas, supra, the State has the right to demand that jurors consider and weigh all of the facts and circumstances and conscientiously apply the law. Ms. Brou was not willing to do this and was firm on not returning a sentence of death.

Based on the above, the State respectfully submits that the courts below properly upheld the excusal of Ms. Brou for cause and that the Witherspoon doctrine has been complied with.

CLAIM NO. II: Petitioner next urges that his penalty of death should be set aside for the failure of the Louisiana State Supreme Court to review all three of the aggravating circumstances found by the jury.

After finding petitioner guilty, the jury imposed the sentence of death. This sentence was based on the finding of three statutory aggravating circumstances, any one of which would have justified the death penalty under Louisiana law. These three aggravating circumstances were: (1) the offender was engaged in the perpetration of an armed robbery; (2) the offender knowingly created a risk of death or great bodily harm to more than one

person; and (3) the offense was committed in an especially heinous, attrocious, or cruel manner. Louisiana Code of Criminal Procedure, Article 905.4 (a), (d), and (g). (West Supp. 1981.)

On reviewing the sentence imposed by the jury, the Supreme Court of Louisiana affirmed the penalty after finding that "the evidence clearly supports the conclusion that the victim was murdered in the course of an armed robbery". State v. Williams, 383 So.2d 369, 374 (La. 1980). The Court then noted:

> "The jury having properly concluded that at least one statutory aggravating circumstance existed, it was within their power to return a recommendation of death without finding other aggravating circumstances. Thus, further inquiry as to whether these other aggravating circumstances were properly found to exist is merely cumulative and unnecessary to support the jury's verdict."

The State would submit that this finding by the Louisiana court was proper and that the courts below properly affirmed the decision.

In urging this Court to grant Certiorari, petitioner, as he did in the court below, relies heavily on the case of Stephens v. Zant, 631 F.2d 397 (5th Cir. 1980), cert. granted, ____ U.S. ____, 102 S.Ct. 90, ____ L.Ed. 2d ____ (1981).

In Stephens, the Fifth Circuit vacated a death sentence because one of the three aggravating circumstances found by the jury was later found to be unconstitutional. Stephens, 631 F.2d at 406. The Court relied on the case of Stromberg v. California, 283 U.S. 359 (1931), in which this Court held that if the jury has been instructed to consider several grounds for conviction, one on which proves to be unconstitutional, and the reviewing court is thereafter unable to determine from the record whether the jury relied on the unconstitutional ground, the verdict must be set aside. Stephens, 631 F.2d at 406.

In Stephens v. Zant, ____ U.S. ____, 102 S.Ct. 1855, ____ L.Ed.2d ____ (1982), when the case was originally before this Honorable Court, this Court certified the following question to the Georgia Supreme Court:

> What are the premises of state law that support the conclusion that the death sentence in this case is not impaired by the invalidity of one of the statutory aggravating circumstances found by the jury. (Emphasis added.)

Zant, supra, 102 S.Ct. 1859.

Thus, the main crux of the Zant case focused on the unconstitutionality of one of the aggravating circumstances found and relied on by the jury in imposing the sentence.

In the present case, none of the aggravating circumstances relied on by the jury are invalid, for all met constitutional muster. Thus, Stephens can be distinguished from the present case in that in Stephens the jury was permitted to rely on an unconstitutionally vague aggravating circumstance, whereas in the present case, all of the aggravating circumstances found are constitutionally sound. The aggravating circumstance of armed robbery-murder was clearly present and unanimously found by the jury and affirmed by the Louisiana State Supreme Court. Under Louisiana law, the presence of any one aggravating circumstance justifies the imposition of the death penalty and therefore, there was no need for the Louisiana State Supreme Court to go any further.

Louisiana Code of Criminal Procedure, Article 905.3 requires the finding of only one aggravating circumstance before imposition of the death penalty will be justified. This article has been interpreted by the Louisiana State Supreme Court to mean that if the jury finds more than one aggravating circumstance and one is clearly supported by the record, it is unnecessary to review the remaining circumstances and even if the remaining circumstances are unsupported by the evidence, it is unnecessary to overturn the sentence. State v. Mattheson, 407 So.2d 1150 (La. 1982); State v. Monroe, 397 So.2d 1258 (La. 1981); State v. Martin, 376 So.2d 300 (La. 1979), cert. denied, 449 U.S. 998. Applying this rational to the present case, the finding beyond a reasonable doubt the presence of one of three constitutionally sound aggravating circumstances is enough to justify the imposition of the death penalty.

In short, Stephens is distinguished from the present case in that in this case, the aggravating circumstances relied on by the jury are all constitutional and valid. Since Louisiana law requires the finding of only one aggravating circumstance to justify the penalty of death, the Louisiana State Supreme Court was justified in ending its determination after finding one of the three (3) to have been proven beyond a reasonable doubt. Based on the above, the State submits that petitioner's argument must fall and this claim is no ground to grant the Writ of Certiorari.

CLAIM NO. III: The courts below properly determined that the Louisiana State Supreme Court's method of reviewing death sentences is adequate as an insurance against arbitrary imposition of the death penalty.

In this final allegation of error, petitioner contends that the comparitive review of death penalty cases on a judicial district, rather than on a statewide basis, violates the Eighth and the Fourteenth Amendments by failing to insure the fair and even handed administration of the death penalty. It is petitioner's view that a statewide comparative review is mandated to meet the requirements as set out in Furman v. Georgia, 408 U.S. 238 (1972).

As noted by the Fifth Circuit in the decision below, although this Court has approved of a statewide comparative review as an effort to insure against arbitrary impositions of the death penalty, it has never required nor implied that such a review is constitutionally mandated. Williams v. Maggio, 679 F.2d 381, 395 (5th Cir. 1982). Rather, this Court has left the review scheme up the states and has only required that the method employed meet the test outlined in Furman v. Georgia, 408 U.S. 238 (1972), that the death penalty would not be imposed in an arbitrary and capricious manner by aberrant juries. Gregg v. Georgia, 428 U.S. 153 (1976); Proffit v. Florida, 428 U.S. 242 (1976); Jurek v. Texas, 428 U.S. 262 (1976). Specifically, in Proffit v. Florida, supra, this Court stated:

> While it may be true that the (Florida Supreme) Court has not chosen to formulate a rigid objective test as its standard for review of all cases, it does not follow that the appellate review process is ineffective or arbitrary.

Proffit, 428 U.S. at 258. Thus, it can be seen that the method of review is left up to the individual states with the only requirement is that the method employed measure up to the constitutional requirements as established in Furman v. Georgia, supra.

The Louisiana State Supreme Court's method of review can be found in that court's Rule 28. That rule requires the court to review the imposition of the death penalty and to compare the case in which it was imposed with the other first degree murder cases within the same judicial district in which the sentence was imposed. Review in this manner allows review of cases which arose in and were tried before juries selected from a constitutionally adequate cross section of the community.

> "Just as a venire chosen from a cross section of the community in which the crime is committed is an adequate constitutional safeguard against arbitrary imposition of verdicts and sentences, so a review of the murder conviction imposed within that venire community is sufficient to ensure against arbitrary imposition of the death penalty." Williams, supra, at 395.

The State of Louisiana submits that if this judicial district is an adequate cross section of the community from which to select jurors for a constitutionally fair and impartial trial, then the judicial district should be an adequate cross section with which to compare death penalty sentences. If this Court holds that a state wide review of death penalties is required to ensure the validity and fairness of a death sentence, then naturally petitioner's next move to allege that a jury selected from the same cross section of the community is inadequate.

In sum, there exists no constitutional requirement that death penalties be reviewed on a statewide basis. Rather the method is left to the states so long as the method chosen meets constitutional scrutiny. Therefore, the State respectfully submits that petitioner's constitutional rights are adequately protected by the sentence review in Louisiana.

CONCLUSION

In conclusion, the State submits that for the reasons presented herein and above, the conclusions of law drawn by the courts below are correct and petitioner's application for Writ of Certiorari and the relief sought therein should be denied.

Respectfully submitted

WILLIAM J. GUSTE, JR.
ATTORNEY GENERAL
STATE OF LOUISIANA

OSSIE BROWN
DISTRICT ATTORNEY
NINETEENTH JUDICIAL DISTRICT
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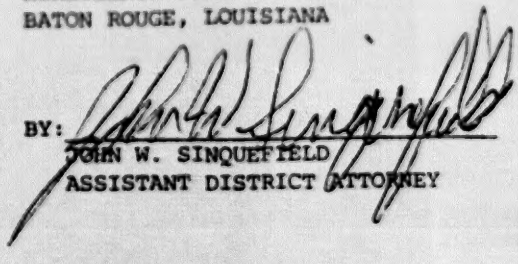
BY: 
JOHN W. SINQUEFIELD
ASSISTANT DISTRICT ATTORNEY

CERTIFICATE

I hereby certify that a copy of the foregoing has been mailed, postage prepaid, to Mr. Richard E. Shapiro, Attorney for Petitioner, Division of Public Interest Advocacy, CN850, Trenton, New Jersey 08625.

Baton Rouge, Louisiana, this 28th day of January, 1983.

JOHN W. SINQUEFIELD
ASSISTANT DISTRICT ATTORNEY